

REMARKS

The present Amendment is fully responsive to the Office Action having a mailing date of January 13, 2009 (the "Office Action"). After entry of this Amendment, claims 28, 30, 32-35, 38-43, 45, 47, 48, 50, 51, 53, 55, 56, and 58-72 are pending in the Application. Claim 28 has been rewritten to include the recitations of dependent claims 31 and 37. Claims 31 and 37 have been cancelled without prejudice. No new matter has been added by this Amendment and support for the claims may be found throughout the specification and drawings. At least for the reasons set forth below, Applicant respectfully traverses the foregoing rejections. Further, Applicant believes that there are also reasons other than those set forth below why the pending claims are patentable, and reserves the right to set forth those reasons, and to argue for the patentability of claims not explicitly addressed herein, in future papers.¹ Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicant expressly does not acquiesce to the taking of Official Notice, and respectfully requests that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

Applicant respectfully requests reconsideration of the present Application in view of the above amendments and the following remarks.

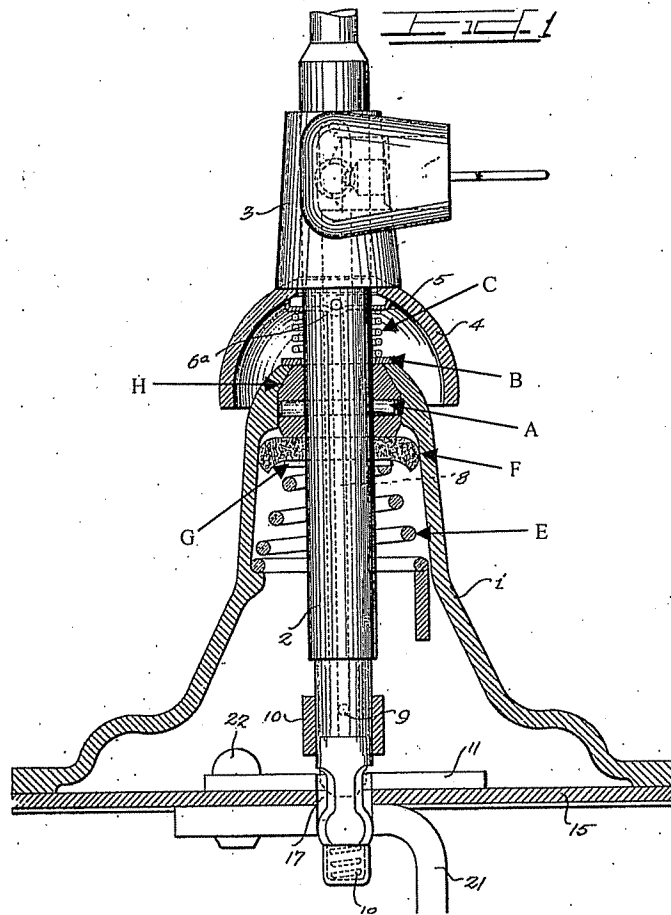
Claim Rejections – 35 U.S.C. § 102

I. In the Office Action, claims 28, 30-35, 37-43, 45, 47, 48, 50, 51, 53, 56, 58-62, 64 and 68, stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Blood et al. (US 1,780,898) (hereinafter "Blood"). Applicant respectfully traverses the rejection for at least the following reasons.

¹ As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such assertions/requirements in the future.

A. Independent Claim 28

The rejection with respect to claim 28 is respectfully traversed. Blood does not anticipate, teach, or suggest the claimed combination of elements.



The Office Action at page 4 includes what appears to be a reproduction of Fig. 1 of Blood, with subsequently added annotations identifying various features that allegedly correspond to the features recited in claim 28. A copy of Fig. 1 of Blood is reproduced above, along with the Examiner's annotations designating various features of the shifting mechanism. With reference to Fig. 1 of Blood, the Examiner contends that the member identified by reference character "H" corresponds to the "first element" of claim 28 (*see* page 2 of the Office Action); the washer positioned atop of transmission casing cover (1) (identified by reference character "B") corresponds

to the “second element”; the ring member (5) corresponds to the “third element”; and the spring positioned between the washer and ring member (5) (identified by reference character “C”) corresponds to the “biasing element”. The washer positioned atop the transmission casing cover (i) that allegedly corresponds to the “second element” in claim 28, does not, however, “selectively” engage member “H” that allegedly corresponds to the “first element” of claim 28. Rather, the washer remains in constant contact with member “H”. At no point during the operation of the shift mechanism does the washer disengage member “H”. The washer is held in constant contact with member “H” by the spring (identified by reference character “C”) positioned between the washer and ring member (5). Because the washer is not connected to lever (2) (a fact which the Examiner impliedly concedes; *see* page 15, paragraph 3 of the Office Action, in which the Examiner notes that the washer (member “B”) does not pivot with the lever) it will necessarily remain in continuous contact with member “H” as lever (2) is pivoted. Accordingly, it is respectfully submitted that Blood does not disclose a “second element” selectively engaging a “first element”, as recited in claim 28.

B. Dependent Claims 30-35, 37-43, 45, 47, 48, 50, 51, 53 and 64

The rejection is deemed moot with respect to claims 31 and 37, which have been cancelled without prejudice. Claims 30, 32-35, 38-43, 45, 47, 48, 50, 51, 53 and 64, depend either directly or indirectly from claim 28, and are therefore in a condition for allowance for at least the same reasons as set forth above with respect to claim 28. Nevertheless, these dependent claims also recite independently patentable subject matter.

For example, claim 32 recites in part that the “biasing force operates in a generally non-traverse direction relative to said longitudinal axis of said lever.” In contrast to claim 32, the “biasing member” in Blood (identified by reference character “C” in Fig. 1 of Blood shown above) at least partially operates in a transverse direction relative to the longitudinal axis of lever (2). This is due to the fact that the “biasing member” in Blood is not uniformly compressed as lever (2) is pivoted. But rather, one side of the spring is compressed more than an opposite side as lever (2) is pivoted, a fact which the Examiner concedes (*see* pg. 15, paragraph 3 of the Office Action, in which

the Examiner states that “as the lever 2 is shifted about the pin A, that one side of the spring C is compressed more than the opposing side”). The non-uniform compression produces a biasing force having a force vector that is skewed relative to the longitudinal axis of lever (2). The biasing force vector includes both a longitudinal component operating generally parallel to the longitudinal axis of lever (2), and more importantly, a transverse component operating generally perpendicular (i.e., transverse) to the longitudinal axis of lever (2). As a consequence of the transverse component, the biasing force generated by the alleged “biasing member” in Blood does not operate in a generally non-transverse direction, as recited in claim 32, due to the non-uniform compression of the “biasing member” as lever (2) is pivoted.

Claim 45 recites in part that the shift lever mechanism includes “a second biasing member ... [including] a sixth element axially fixed to said lever relative to said longitudinal axis ... said second biasing member applying a biasing force to said lever moving said lever into at least one biasing position.” With reference to Fig. 1 of Blood shown above, the Examiner alleges that Blood discloses the “second biasing member” of claim 45, which allegedly consists of the members identified by reference characters “F”, “G” and “E”, and sleeve (10) (*see* pg. 7 of the Office Action). Claim 45 describes the “second biasing member” as applying a biasing force to the lever to move the lever into at least one biased position. Consequently, each member of the “second biasing member” in some way contributes to biasing the lever to the biased position. However, in contrast to claim 45, not all of the components identified by the Examiner as allegedly corresponding to the “second biasing member” of claim 45 assist in biasing lever (2) to a biased position, and therefore cannot be considered part of the “second biasing member”. For example, sleeve (10), which allegedly corresponds to the “sixth element” of claim 45 (*see* Office Action, pg. 7) does not appear to have a function in biasing lever (2) to a biased position. Nor does sleeve (10) appear to assist any of the other members “F”, “G” and “E” in performing their respective functions. Indeed, there appears to be no functional relationship between sleeve (10) and the remaining three members. Consequently, sleeve (10) cannot be considered part of the “second biasing member”, as recited in claim 45. But, even assuming for the sake of argument that sleeve (10) may be considered part of the “second biasing member”, which it cannot, sleeve (10) is nevertheless not “axially fixed” to lever (2), as recited in claim 45, but is instead slideably connected to the lever. More precisely,

Blood discloses that sleeve (10) is moveable axially relative to lever (2) to enable sleeve (10) to move into and out of engagement with an aperture in a pair of shifting plates (11). (*See* Blood, Figs. 1 and 2, and the written text at lines 75-98). A rod (8) connects sleeve (10) to a ring member (5), which slidably engages lever (2). *Id.* Ring member (5) engages a hood (4). Displacing hood (4) downward causes ring member (5) to also move downward, which in turn engages sleeve (10) with the aperture in shifting plates (11). *Id.* For this to occur, sleeve (10), which allegedly corresponds to the “sixth element” of claim 45, must be free to move axially relative to lever (2), and thus cannot be “axially fixed” to the lever. Therefore, Blood fails to disclose “a sixth element” that is “axially fixed” relative to a longitudinal axis of the lever, as recited in claim 45.

Claim 48 recites in part that the “pivoting member” includes a “spherical element disposed in a retaining cup.” With to Fig. 1 of Blood shown above, the Examiner alleges that the member identified by reference character “H” corresponds to the “spherical element” of the “pivoting member”, as recited in claim 48. (*See* Office Action, page 7). This assertion, however, is inconsistent with the Examiner’s previous allegation that member “H” corresponds to the “first element” of claim 28 (claim 48 depends directly from claim 28). The same feature in a prior art reference cannot correspond to two separate features in the same claim. The Examiner may therefore allege that member “H” of Blood corresponds to the “first element” of the “biasing member” (claim 28) or the “spherical element” of the “pivoting member” (claim 48), but not to both. But even if member “H” is considered part of the “pivoting member”, it nevertheless is not spherically shaped, as recited in claim 48, but is a combination of flat, cylindrical and conical surfaces. A sphere is defined as “any round body or figure having the surface equally distant from the center at all points.” (*Webster’s New World Dictionary, Second College Edition*, 1984). None of the surfaces of member “H” of Blood satisfy this requirement. Although certain surfaces of member “H” may have a circular cross-section, none of the surfaces are “spherical”. For example, the surface that includes the aperture that receives the pin (member “A”) used to attach member “H” to lever (2) has a cylindrical shape, and the adjacent surface that engages the inner surface of housing (i) has a conical shape. Even the lower end of member “H” that adjoins the member identified by reference character “F” has a conical shape. None of the surfaces of member “H” have

a spherical shape. Accordingly, Blood does not disclose a “pivoting member” having a “spherical element disposed in a retaining cup”, as recited in claim 48.

Claim 64 provides in part that the first element slidably engages the lever. With reference to Fig. 1 of Blood shown above, the Examiner alleges that the member identified by reference character “H” corresponds to the “first element” of claim 28 (from which claim 64 directly depends). (See Office Action, pg. 2). Member “H”, however, is shown in Blood to be fixedly attached to lever (2) by means of the pin identified by reference character “A”. The pin prevents movement of member “H” relative to shaft (2). Accordingly, Blood does not disclose a “first element” slideably engaging a lever, as recited in claim 64.

C. Independent Claim 56

The rejection with respect to claim 56 is respectfully traversed. Blood does not anticipate, teach, or suggest the claimed combination of elements.

Claim 56 recites in part that the shift lever mechanism includes “a third element fixed relative to said lever”. With reference to Fig. 1 of Blood shown above, the Examiner alleges that ring member (5) of Blood corresponds to the “third element” of claim 56. (See Office Action, pg. 9). In contrast to claim 56, Blood describes ring member (5) as being “slidable”. (See Blood, written text at line 79). A bar (8) connects ring member (5) to sleeve member (10). Ring member (5) engages cap (4), which when depressed slides ring member (5) downward relative to lever (2) to engage sleeve member (10) with an aperture in shifting plates (11). (See Blood, Figs. 1 and 2, and the written text at lines 75-98). Ring member (5) is therefore not “fixed” relative to lever (2). Accordingly, Blood does not disclose a “third element” that is fixed relative to a lever, as recited in claim 56.

D. Dependent Claims 58-62 and 68

Claims 58-62 and 68, depend either directly or indirectly from claim 56, and are therefore in a condition for allowance for the same reasons as set forth above with respect to claim 56.

A. Independent Claim 28

14

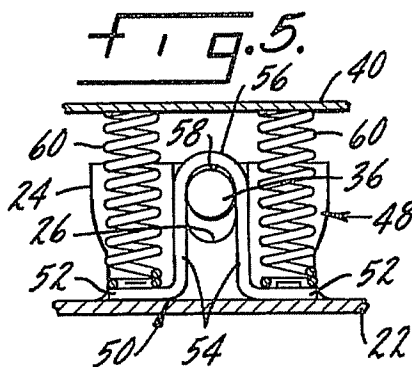
into at least one biasing position.” With reference to Fig. 3 of Simmons, a copy of which is reproduced above, the Examiner alleges that Simmons discloses the “biasing member” of claim 28, which allegedly consists of pin (36) (the Examiner actually references reference number (38), which corresponds to the curved end of pin (36)), saddle (50) (the Examiner actually references reference number (58), which corresponds to the curved surface of saddle (50)), spring (60), and boot (46). Claim 28 describes the “biasing member” as applying a biasing force to the lever to move the lever into at least one biased position. Each component of the “biasing member” contributes to biasing the lever to the biased position. However, in contrast to claim 28, not all of the components identified by the Examiner as corresponding to the components of the “biasing member” of claim 28 actually contribute to biasing lever (30) to a biased position, and therefore cannot be considered part of the “biasing member”. For example, boot (46) does not exert any appreciable biasing force on lever (30). Rather, it merely provides a decorative cover for the shifting mechanism and may prevent dirt and debris from entering the shifting mechanism. In addition, boot (46) does not interact with any of the remaining alleged “biasing member” components, namely pin (36), saddle (50), and spring (60), to assist them in performing their respective functions. Therefore, boot (46) of Simmons cannot properly be considered one of the components of the “biasing member” as recited in claim 45. Therefore, Simmons fails to disclose a “biasing member” that includes a “third element” axially fixed to a lever, as recited in claim 45.

B. Dependent Claims 65, 67 and 69-72

Claims 65, 67 and 69-72, depend either directly or indirectly from claim 28, and are therefore in a condition for allowance for the same reasons as set forth above with respect to claim 28. Nevertheless, these dependent claims also recite independently patentable subject matter.

For example, claim 67 recites in part that the “second element selectively engages said third element when said lever is pivoted to at least one of said first and second positions.” The Examiner alleges that saddle (50) of Simmons corresponds to the “second element” of claim 67, and boot (46) corresponds to the “third element”. Even assuming, for the sake of argument, that boot (46) corresponds to the “third element” of claim 67, which it does not, saddle (46) does not “selectively

engage” the boot. The Examiner contends that saddle (50) engages boot (46) through housing (22) (*see* Office Action, pg. 13). The term “engagement” requires that, at a minimum, there be some functional interrelationship between the two purportedly engaged components. There is no such relationship between boot (46) and saddle (50) of Simmons. The only common feature between the two components is that they both interact with housing (22) of Simmons. But, even assuming, for the sake of argument, that saddle (50) engages boot (46), which it does not, the two members do not “selectively engage” one another. The term “selective engagement” denotes that the two components do not have to be constantly engaged. Based on the Examiner’s interpretation of the term “engage”, which Applicant does not stipulate too, not only does saddle (50) engage boot (46) through housing 22, but the two components are also engaged through spring (60) that engages housing (22) and saddle (50). (*See* Fig. 5 of Simmons, a copy of which is reproduced below). Spring (60) is in continuous contact with saddle (50) and housing (22) (*see* Simmons, Fig. 5). Applying the Examiner’s broad definition of “engagement”, saddle (50) is also in continuous contact (i.e., engagement) with boot (46) through spring (60) and housing (22). Since saddle (50), spring (60), housing (22), and boot (46) remain in continuous contact, saddle (50) does not “selectively engage” boot (46). Accordingly, Simmons does not disclose a “biasing member” including a “second member” that “selectively engages” a third member, as recited in claim 67.



Claim 69 recites in part that the “second element” slidably engages the lever. The Examiner contends that saddle (50) of Simmons, which allegedly corresponds to the “second element” of claim 69, engages lever (32) of Simmons through pin (36). (*See* Office Action, pg. 12). Saddle (50)

does not, however, slidably engage lever (32). The term slidable describes the form of engagement between the two components. The two components must be in direct contact for there to be "slidable engagement". Saddle (50), however, does not directly engage lever (36). Since saddle (50) does not directly contact lever (32), the two members cannot slideably engage one another, as recited in claim 69.

Claim 70 recites in part that the "second element includes a second region engaging said first element when said lever is pivoted to said second position, said second region being disengaged from said first element when said lever is pivoted to said first position." Claim 69, which is incorporated by reference in claim 70, recites in part that the "second element" includes a "first region" that engages the "first element" when the lever is pivoted to the first position, and is disengaged from the "first element" when the lever is pivoted to the second position. The Examiner alleges that saddle (50) of Simmons corresponds to the "second element" of claim 70. The shifting mechanism in Simmons employs two separate saddles (50) disposed on opposite sides of lever (32), as shown in Fig. 3 of Simmons, which is reproduced above. The Examiner contends that the recited features of claim 69 can be found on the saddle (50) shown to the right of lever (32), and the recited features of claim 70 can be found on the saddle (50) shown to the left of lever (32). Applicant submits that this is an improper interpretation of claim 70. All of the features recited in claim 70 (which include the recitations of claim 69) must be present in the same member, which they are not. At least one of the saddles (50) must include both a "first region" that engages the pin (36) when lever (32) is pivoted to a first position, and disengages the "first region" when lever (32) is pivoted to a second position, and, a "second region" that engages pin (36) when lever (32) is pivoted to the second position, and disengages the "second region" when lever (32) is pivoted to the first position. Simmons, however, does not disclose both features occurring in the same saddle (50). Accordingly, Simmons does not disclose a "second element" that includes a "first region" that engages a "first element" when a lever is pivoted to a "first position", and disengages the "first region" when the lever is pivoted to a "second position", and also includes a "second region" that engages the "first element" when the lever is pivoted to the "second position", and disengages the "second region" when the lever is pivoted to the "first position".

Applicant accordingly requests that the instant rejection under 35 U.S.C. § 102(b) be reconsidered and withdrawn.

Claim Rejections – 35 U.S.C. § 103

In the Office Action, dependent claims 55 and 63 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Blood, as applied to claims 28 and 56, and further in view of Kessmar (US 4,104,929) (hereinafter “Kessmar”). Applicant respectfully traverses the rejection. The cited references, whether taken singularly or in any permissible combination, do not anticipate, teach, or suggest the subject matter of pending claims 55 and 63, at least for the same reasons as set forth above with respect to claims 28 and 56, from which claims 55 and 63 respectively depend. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

CONCLUSION

Reconsideration and allowance are respectfully requested. In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

It is believed no fees are due with this response. However, if any fees are required in connection with the filing of this paper that are not identified in any accompanying transmittal, permission is given to charge our Deposit Account No. 18-0013, under Order No. 66904-0001 from which the undersigned is authorized to draw. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 66904-0001 from which the undersigned is authorized to draw.

Dated: March 13, 2009

Respectfully submitted,

Electronic signature: /Daniel J. Checkowsky/

Michael B. Stewart

Registration No.: 36,018

Daniel J. Checkowsky

Registration No.: 51,549

RADER, FISHMAN & GRAUER PLLC

Correspondence Customer Number: 10291

Attorneys for Applicant

R0449432.DOC